



# **Funding the Accountant in Bankruptcy 2018-19**

## **A Consultation Paper**

## FUNDING THE ACCOUNTANT IN BANKRUPTCY 2018-19 – CONSULTATION

1. This consultation paper seeks views on the right approach to adopt to funding Accountant in Bankruptcy, and in particular, on proposals to increase fees from 1 June 2018. We are inviting you to provide feedback on specific questions which are outlined on pages 13 and 14. Your responses will then be analysed and used, along with a range of other available information and evidence, to determine the right approach.

### *Background*

2. Accountant in Bankruptcy (AiB) is an Executive Agency of the Scottish Government. The main functions of the Agency are the delivery and supervision of personal insolvency casework – with currently some 50,000 live cases - including:

- determining debtor applications for bankruptcy;
- the Accountant acting as trustee in all bankruptcies where no private trustee is appointed (in effect, administering the case);
- overseeing the performance of private trustees;
- regulating and supervising the protected trust deed system; and
- adjudicating all Debt Arrangement Scheme applications.

Further detail on the Agency’s functions is at Annex A. It is worth noting that Corporate Insolvency remains very largely reserved to the UK Parliament.

### *Costs*

3. Running the Agency cost in total some £12.6m in 2016-17 – or £242 per live case. This was made up as follows:

Staff Costs	37%
Direct Costs of Case Management	36%
Other Operating Costs	17%
Non cash costs	10%

More detail on the Agency’s spending in 2016-17 is at Annex B. It is however worth noting that the “direct costs of case management” will change depending on the number of cases – especially new cases, since most case costs are incurred early in a case’s life. On the other hand, the Agency’s other costs are not directly related to case numbers: for example, the costs of accommodation.

4. The Agency has a strong record in delivering savings in those elements of costs under its direct control. For example, staff numbers (FTEs) have reduced by 14% over the last two years, and the recent procurement exercise for the main Insolvency Agents' contract is expected to deliver savings of £1.6m over the contract's potential 4 year life.

*How is the Agency currently funded?*

5. There is of course no popular way of funding personal insolvency, but it remains a vital function of government, both to provide debtors with a fresh start when they face insuperable financial difficulties, and to give creditors certainty about what happens when debtors can no longer pay their debts.

6. In 2016-17, the £12.6m needed to run the Agency came very largely from fees and charges (operating income) raised from the cases themselves, with a small "top up" of £134,000 coming from the Scottish Government. The details of that operating income are set out in Annex B.

7. Although this income comes from the individual cases, this is not to say that the costs of each case are met by that case – far from it: the system of fees and charges has developed over time to include complex and significant cross-subsidies between both individual cases and between the three main debt management and debt relief products (bankruptcy, protected trust deeds and the Debt Arrangement Scheme). This remains complex in spite of the major reforms that dramatically reduced the number of different fees and charges paid from 1 April 2015 to make the system more transparent and predictable. It is worth explaining why this is the case in some detail.

8. Most bankruptcies produce no money to cover costs or pay a dividend to creditors. In 2016-17, of the 7,500 bankruptcies that were discharged, over 5,600 (76%) produced no dividend to creditors. Where cases cannot meet their costs, they need to be funded from elsewhere.

9. These facts underpin the fundamentally important role of the Accountant in acting as a Trustee of last resort – private sector trustees would not take on cases where they could not cover their costs, so that without the AiB, there would be no access to bankruptcy for these debtors. Such was the case before the 1985 Act first introduced public funding for bankruptcy. It was the rapid spiralling of costs out of control after the introduction of that Act – with public funding peaking at £26m a year – that led to the creation of a body able to administer cases within the public sector in 1993.

10. The Agency's current model funds those cases that do not cover their own costs from across all the possible sources of funding – the debtors themselves,

creditors (by increasing the fees that are taken from those cases that do have money in them), and the public purse:

*i) Debtors*

The current system asks debtors to make a small contribution to the costs of bankruptcy administration via an upfront application fee. This is set at £90 for a “*Minimal Asset Process*” (MAP) application or £200 for a full administration bankruptcy. In recognition of the fact that some individuals may struggle to fund a one-off payment, fees can also be paid in instalments prior to the application. Clearly there is a balance to be struck here – applying for bankruptcy is a serious step, and it is important that this is not made too easy. So some upfront fee is helpful in preventing ill-thought applications. Too high a fee would however put bankruptcy beyond the reach of some who would benefit from it. Arguably, the cost of even this fee - formally paid by debtors - is de facto met by creditors, since it might be seen as reducing the funding debtors have available to pay towards their debts. It is worth pointing out that the £90 is the sole income the Agency receives towards the costs of administering MAP cases, all of which are managed in-house (such cases undergo a far simpler process than full administration bankruptcies).

There are also a tiny minority of cases where the debtor’s estate or the contributions made from the debtor’s income over the period of the bankruptcy are sufficient to cover the costs of the case, the debts in full, and any statutory interest due on those debts. In such cases, it is the debtor who meets the full costs of the case. In 2016-17, there were 229 such cases.

*ii) Creditors*

Creditors as a class benefit from the administration of those cases that do generate dividends, and we therefore take the view that it is right to ask them to contribute something towards the overall costs of the personal insolvency system. In 2016-17, £17m was repaid to creditors in bankruptcy cases, £29.4m repaid to creditors through protected trust deeds, and £37.3m repaid to creditors through the Debt Arrangement Scheme.

Creditors who take action to make a debtor bankrupt – known as the petitioning creditor – pay an upfront fee, currently £300 where AiB is appointed trustee (or £100 if a private trustee is nominated), which they are able to reclaim from any funds remaining in the case after the costs of the administration have been settled, before the general distribution to creditors. These administration costs consist of the trustee’s remuneration and outlays (payable to the Agency or private trustee) and where the private trustee has to pay fees to the Agency, these will also be reclaimed from case funds before

the distribution to creditors. The residual funding is then divided between the creditors. So with the possible exception of the upfront fee paid by the debtor, all the other fees and charges are effectively picked up by creditors. More detail on the fees taken to cover the administration costs is set out in Annex D and in paragraph 18 below.

Again, it is worth noting that should there be no funds in the case, the upfront £300 fee is the only funding the Agency receives for the administration of the case. Since such cases are brought at creditors' discretion, it seems fair that in cases where funds are present, creditors should make a contribution that covers not only the costs of the individual case, but also the wider costs of the system including the costs of those cases which cannot fund themselves. For particularly expensive cases with funds present, there is a backstop power to ensure that the fees taken at least cover the costs incurred.

Of course, it is wrong to think that creditors bear these costs *themselves* – in reality, they fall to their other customers. Larger creditors will have made provision for bad debts, and will generally have sold on debts long before the debtor falls into bankruptcy – with the creditor recovering lost costs through higher charges to other customers.

iii) *The Public Purse*

In effect, the public purse needs to make up the difference between the Agency's income and expenditure, and more especially to provide balance between financial years (much of the work in a bankruptcy case comes in the first year, much of the income arrives at the end of the case, perhaps four years later).

There is a case for public funding of bankruptcy on both economic and social grounds because of the wider public value the system delivers. The Agency also includes a small staff team that advises Ministers on policy related to the Agency's business, and a team that investigates potential misbehaviour or misconduct by debtors, both of which are functions in the wider public interest for which there is an argument that these should be funded from the public purse.

It is worth noting that the model used in England and Wales is broadly similar, but with significant differences including much larger upfront fees for both debtors and creditors, and a much larger "fixed fee" element across all cases. A summary comparison between the fees charged in England and Wales and the proposals in this paper is included at Annex E.

*Why consult on the Agency’s funding now?*

11. Public funding for AiB has fallen steadily from 2007-8 when it was £6.8m until 2014-15 and 2015-16 when the Agency returned small sums to the Parliament (£812k and £518k respectively). The following table provides much of the explanation for this. Fees are recovered at the end of a bankruptcy. As new case numbers fall, the workload of the Agency reduces, whilst a high number of cases closing generate higher income levels.

Year	Bankruptcies Awarded	Total AiB Caseload at year end	FTE Staff Numbers
2009-10	13,810	62,173	173.4
2010-11	11,443	59,169	158.6
2011-12	11,056	64,892	152.4
2012-13	8,838	69,279	157
2013-14	7,112	71,394	136.5
2014-15	6,730	68,466	150.9
2015-16	3,765	58,636	138.9
2016-17	4,562	52,000	129.7

12. The fall in the number of cases completing, together with a forecast growth in the number of new cases, means that the Agency’s income is predicted to fall more sharply in coming years than its costs – and 2016-17 saw the need for the Scottish Government to provide a small “top up” of £135,000 to the Agency’s budget. Forecasts suggest that even with continued efficiency savings, the Agency’s requirement for public funding will – without action – be around £4.2m in 2018-19 and £3.0m in 2019-20. The big increase in 2018-19 reflects an additional factor – in the 2014 Bankruptcy Act, the Parliament extended the period during which a debtor should make contributions from income towards their debts from three years to four years, so that cases starting after the start of April 2015 will tend to run for a year longer before closing. As a result of this change, we predict there will be a substantial reduction in cases closing in 2018-19, so the income generated from the cases awarded in 2015-16 will not be realised until 2019-20.

*The options for closing the funding gap*

13. The Agency will continue to deliver significant efficiency savings, but these will not be sufficient to close the gap. As with the current structure of fees and charges, the options for increasing the Agency’s income are restricted to seeking more money from debtors, more from creditors, or more from the public purse. All government bodies are asked to work to the general principle of *full cost recovery*, where the users and those who benefit from the service the Agency provides meet the costs associated with those services. Bankruptcy numbers, and income from fees, will however be very dependent on the economic cycle – so that seeking full cost recovery for each and every individual year would mean regular and significant

changes in fee levels. It seems more sensible to set a level of fees that would cover costs over the medium term, even if that implies that the Agency will require public funding in some years, to be repaid as surplus income and surrendered to the Exchequer in other years. (As with other public bodies, the Agency is not allowed to carry balances from one year to the next.)

14. It would be possible to look for a greater contribution from debtors by increasing the upfront debtor application fee. In England and Wales, the fees for their nearest equivalent of the Minimal Asset Process are the same £90, but the fee for applying for a full administration bankruptcy is £680 compared to the £200 fee in Scotland. There are, however, already concerns that even the current significantly lower fees in Scotland can be too high a hurdle for some debtors, and there are a number of charities that offer help in meeting the current fees. This suggests that increasing debtor application fees by the amount necessary to generate significant additional income would make bankruptcy unaffordable for some who would benefit from it. Our strong view is that it would therefore not be appropriate to seek to raise debtor application fees at this time.

15. Having ruled out asking debtors to contribute more, the question is how to find the right balance between creditors and the public purse – bearing in mind that the general principle is for full cost recovery, but that it may not be desirable to increase fees too greatly in any one year.

#### *Determining the right structure of fees and charges in bankruptcy*

16. Having decided the right level of contribution to seek from creditors, there then comes the question of how to deliver a fair fee regime to deliver the required level of receipts.

17. As set out above, the majority of bankruptcy cases produce no funds from which any fees could be taken. That being so, the fee structure must deliver the right total income from those limited number of cases which do have funds. This means there will inevitably be a large element of cross-subsidy from those cases which do contain funds to cover the costs of those that do not. Broadly speaking, the body of creditors is generally the same across cases with funds and cases without, so the costs fall to the same body of creditors and the degree of cross-subsidy does not benefit one group of creditors at the expense of others. Very small creditors who may only ever be involved in one case do however lose out if that case happens to be one with funds in it.

18. The current fee structure reflects a mixed approach to raising fees from those cases with funds:

- a small upfront fee (paid by the debtor or petitioning creditor);

- a flat-rate fee charged to all cases;
- an additional percentage of the funds brought into the case, and a percentage of what is paid out to creditors.

In essence, this means that all cases with funds pay the same basic charge, but then cases with more funds pay more – and the more funds, the more they pay. Again, these three elements could be combined in many ways to produce the same overall level of income. A larger flat-rate element and smaller additional percentage fees would mean that less cases produced any return to creditors at all, but where there was a return to creditors, it would be more.

### *The Agency's Other Fees and Charges*

19. So far, this paper has considered only those bankruptcy cases where the Accountant acts as the trustee. This includes all Minimal Asset Cases and for full administration cases, 86% of debtor applications and 80% of creditor applications (figures drawn from awards made in 2016-17). In the remaining cases, a private Insolvency Practitioner will act as Trustee. Understandably, private Insolvency Practitioners only take cases where there are likely to be sufficient funds to cover their costs – and there is an argument that it is fair to ask these cases also to cross-subsidise the administration of the majority of cases which contain no funds.

20. Currently, such private trustee cases do not pay either the “flat rate” or the “additional percentage” fees discussed earlier. Instead, the Agency charges 17.5% *of the trustee's fees and outlays paid to third parties (legal fees etc)*. This is notionally because the direct costs the Agency incurs from such cases come from the requirement to audit and approve the trustee's fees.

21. This audit fee has long attracted criticism. Charging a fixed percentage of the trustee's fees, and in particular outlays, is not directly related to the work involved in auditing the casework. However, it is clearly important to make sure that such private cases do contribute to the overall costs of the system beyond those costs directly related to the case. Otherwise the costs that had to be borne by those cases with funds in which the Accountant is trustee would increase – driving more cases to private trustees, and leaving the public sector facing the full cost of those cases without funds. An alternative approach would be to see all such private cases paying a fixed fee – to deliver the same total income, this might need to be in the region of £1200. But it is not obvious that this would bring any greater fairness, and the current system has the benefit of being well understood.

### *Non Bankruptcy Fees*

22. The Agency also supervises and regulates protected trust deeds, and acts as the administrator for the Debt Arrangement Scheme.

23. For **Protected Trust Deeds**, the main fee is the annual supervision fee of £100. The receipts from Protected Trust Deeds fees currently more than cover the costs of related administration, and offer a small cross-subsidy that enable the Agency to operate lower fees for bankruptcy administration than would otherwise be the case. Our forecasts suggest this will remain the case in coming years. This is justifiable since the creditors are broadly the same across all the statutory products.

24. For the **Debt Arrangement Scheme**, the main fee generating income for the Agency is a 2% charge on all payments made to creditors. This is not sufficient to cover the costs of administering the scheme, so that these costs are currently subsidised from other income. Covering the cost of DAS in full would require that 2% charge to be raised to 4%, reducing the amount available for creditors. Up to a further 8% goes on the administrative costs of the payment distributors within the scheme, and we intend to consult separately on proposals that would both allow AiB to fully recover costs without reducing the overall return to creditors.

25. There are a host of other small fees for specific actions – for example, £50 “for considering issuing an order curing defects in procedure on receipt of an application by any person having an interest.” These fees do not bring in significant income for the Agency, and cover “additional” administrative tasks that will not occur in most bankruptcies. They are set with two parameters in mind – to recover the average costs of the processes involved, and to meet a commitment given when many of these functions were transferred out of the courts that the fees would remain lower than those previously charged by the courts. It is unlikely any change to these fees could generate significant additional income.

### **Our Proposals**

26. As set out above, forecasting suggests that the Agency will need support of around £4.2m in 2018-19, and £3m in 2019-20. We do not believe it would be sensible to seek to raise even the majority of this from higher fees, so that in the short-term, most of the burden will need to be met by the public purse. Not least because most bankruptcy cases which generate funds run for three to four years, so that changes to the fee structure made for new cases from 1 April 2018 will not work through the system until 2021-22. The alternative of a huge increase in upfront application fees is not thought appropriate. Nevertheless, it is necessary to move the Agency onto a more sustainable pattern of future income. Our initial view is that it would be sensible to look to raise around £1m a year more in fee income by the time the new fees have been fully established.

27. In March 2017, the Agency put forward to the Scottish Parliament a set of proposals to deliver this outcome based on generating additional income as follows:

- i) increasing the creditor application fee from £100 to £150, and the fee if AiB is subsequently appointed trustee from £200 to £300, raising an additional £210,000 a year;

- ii) increasing the flat rate fee charged to each case where AiB is the trustee from £1100 to £1500, raising an additional £460,000 a year;
- iii) increasing the percentage taken from asset realisations so that 15% is taken of the first £50,000, 5% from the next £50,000, and 2% from any further funds – compared to the current 10% from the first £10,000, 5% from the next £10,000 and 2% thereafter. These changes would raise an additional £210,000 a year;
- iv) raising an additional £100,000 from miscellaneous small changes across both bankruptcy and protected trust deeds; and
- v) capping the “audit fee” (see paragraph 20) at £5,000, reducing income by some £86,000 a year.

Full details of these proposals is contained in Annex D

28. These proposals were withdrawn from the Parliament given concerns raised by the Economy, Jobs and Fair Work Committee on three main fronts:

- that the increase proposed in the percentage taken from assets realised would dramatically reduce any potential reversion to a debtor where a property had been sold;
- concerns that capping the audit fee required offsetting increases elsewhere, when it would be fairer to maintain the element cases managed by private trustees contributed to overall system costs; and
- concern over a separate proposal contained in the draft regulations to allow the Agency to charge interest for late payment of debts

29. To maintain the same level of additional income, changes to the March 2017 proposals must be “revenue neutral”. In light of the Committee’s concerns, we are now minded to:

- drop plans to cap the audit fee
- drop plans to introduce the charging of interest for late payment of debts to the Agency;
- make no changes to the current percentages taken from assets realised; but
- increase the flat rate fee charged to each case where AiB is trustee by a further £200, so that the new fee would be £1700.

The practical impact of these changes, compared to our earlier proposals, is that slightly fewer cases will produce any dividend to creditors, but those cases that continue to produce dividends, will tend to produce slightly larger ones.

30. It is worth pointing out that the number of cases producing slightly larger dividends will be relatively small - in 2015-16, there were only 22 cases in which any reversion was available for the debtor, and only 78 of the 14,905 cases under management at that point would have paid more under the changes to commissions put forward in the March proposals (an average of £3000 more per case).

*The impact of fee changes on creditor behaviour*

31. The Committee also raised concerns about the possibility that the increase in creditor upfront fees might lead some creditors to reduce the number of cases where AiB is appointed to act as Trustee – with the Committee’s concern being any such reduction would further reduce AiB’s income, and hence necessitate further fee rises.

32. We have subsequently had confirmation from the creditors responsible for most creditor applications for bankruptcy that they would not have expected the March proposals to change their approach. Since the vast majority of creditor petitions produce cases where there are no dividends to ordinary creditors, the Agency is in effect asked to administer these cases for no more than the upfront fee (proposed as £450). No private sector trustee would take on cases for this level of income.

33. Even if creditors were to seek to appoint a private trustee in more cases, this would not negatively impact AiB’s financial position, nor would it lead to a reduction in work for AiB staff. This is a result of the way in which AiB administer bankruptcies whereby a small proportion of debtor application bankruptcy cases is retained for in-house management, with the vast bulk, including all creditor petition bankruptcies, being allocated to private sector firms under the “insolvency services” contract. These firms receive a set fee per case which is not determined by case numbers, augmented by commissions derived from realisations, with 65% of that fee payable six months into the case on the completion of certain key tasks. These contractual arrangements allow AiB to adjust to significant changes in case volumes without having to dramatically increase or decrease staff numbers from year to year.

34. We also know the impact on creditors by the time the fees have fully worked through the system in 2020-21 will be to reduce the dividends returned to them by the same level as whatever increase in fees is agreed. On the basis of the draft Regulations, this would be around £800,000 per year, spread across the full range of creditors – less than 1% of the money returned to creditors in 2015-16 (see above). We would not expect this to drive any significant change in creditor behaviour. Not least this is because almost all big creditors function at a UK level, and their policy decisions about whether or not to apply for the bankruptcy of a debtor are consistent across the UK. Since our fees remain far below those in England and Wales, the higher fees should have no impact on their decisions as to whether or not to seek to

make a debtor bankrupt. Arguably this is a shame – we do not want creditors' decisions whether to seek to make someone bankrupt to be determined by whether the fee is £100 more or less, since bankruptcy should be the absolute last resort.

**CONSULTATION QUESTIONS**

**1. Do you agree that upfront debtor application fees should not be increased at this point?**

Yes  No  Don't know

Please explain your answer

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**2. Do you think that the principle of full cost recovery is appropriate in the bankruptcy system?**

Yes  No  Don't know

Please explain your answer

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**3. Do you agree that it is right to seek to recover the costs across the system as whole, so that there is a degree of cross subsidy between MAP, full administration bankruptcy and PTDs?**

Yes  No  Don't know

Please explain your answer

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**4. Do you agree it is right to ask those bankruptcy cases administered by private trustees to make a contribution towards the costs of those cases which contain no funds?**

Yes  No  Don't know

Please explain your answer

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**5. Do you agree that it is right that, of the predicted £4.2m shortfall in 2018-19, the public purse should meet the bulk of these costs, with fee increases designed to generate an additional £1m a year in the longer term?**

Yes  No  Don't know

Please explain your answer

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**6. Do you agree that the proposals set out in paragraph 29 represent a fair way of generating this additional income?**

Yes       No       Don't know

**If "no", what alternative approaches would be fairer?**

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**7. Do you agree with our assessment that the proposed increase in upfront creditor fees is unlikely to alter creditor behaviour except at the margins?**

Yes       No       Don't know

**If no, what impact do you think it would have?**

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**8. Are there any other points you would like to raise?**

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## RESPONDENT INFORMATION FORM

Please note that this form must be returned with your response to ensure that we handle your response appropriately.

### 1. Name/Organisation

**Organisation Name**

**Title** Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

**Surname**

**Forename**

### 2. Postal Address

<b>Postcode</b>	<b>Phone</b>	<b>Email</b>

### 3. Sector

*Please tick as appropriate*

Creditor

Advice Sector

Local Authority

Solicitors/Advocates

Insolvency Practitioners

Judiciary

Debtor

Other  Please specify \_\_\_\_\_

#### 4. Permissions - I am responding as...

<b>Individual</b> <input type="checkbox"/>	<b>/</b>	<b>Group/Organisation</b> <input type="checkbox"/>
<i>Please tick as appropriate</i>		

  

<p><b>(a)</b> Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p><i>Please tick as appropriate</i>    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>(b)</b> Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p><i>Please tick ONE of the following boxes</i></p> <p>Yes, make my response, name and address all available    <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response available, but not my name and address    <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response and name available, but not my address    <input type="checkbox"/></p>	<p><b>(c)</b> The name and address of your organisation <b>will be</b> made available to the public (in the Scottish Government library and/or on the Scottish Government web site).</p> <p>Are you content for your <b>response</b> to be made available?</p> <p><i>Please tick as appropriate</i>    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
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<p><b>(d)</b> We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?</p> <p style="text-align: center;"><i>Please tick as appropriate</i>    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>
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Please return your response to [AIB\\_Policy\\_Development\\_Enquiries@gov.scot](mailto:AIB_Policy_Development_Enquiries@gov.scot) or to: Carol Kirk, AiB, 1 Pennyburn Road, Kilwinning, Ayrshire, KA13 6SA by 12 March 2018.

**Delivering, with stakeholders, a range of options for individuals seeking debt relief and debt management by:**

determining debtor applications for bankruptcy

acting as trustee in all bankruptcies awarded by the Agency, where the debtor has not requested a named person to be the trustee

acting as trustee in all bankruptcies awarded by the Sheriff Courts, where a sheriff does not appoint a named person to be trustee

acting as interim trustee before the award of bankruptcy except in those cases where an alternative interim trustee is appointed when nominated by the petitioning creditor

acting as trustee as appointed by the sheriff on the resignation or death of the original trustee where no new trustee is elected

undertaking the functions of the commissioners in bankruptcies where none are elected by creditors

adjudicating all DAS applications and approving DAS money advisers when required

**Supervising insolvency in Scotland by:**

overseeing the operation of the bankruptcy process including the performance of trustees and commissioners in the exercise of their statutory duty

regulating and supervising the registration and administration of trust deeds, including the performance of trustees

investigating and referring Bankruptcy Restrictions Orders to court and adjudicating on them

registering company insolvency documents required to be filed by receivers and liquidators in terms of the Insolvency Act 1986

**Providing statutory information by:**

maintaining a public Register of Insolvencies, which records bankruptcies awarded by the Scottish Courts or by the Agency. The register also provides moratorium information along with information on protected trust deeds, Bankruptcy Restrictions Orders and corporate insolvencies

maintaining the DAS register, which records details of individuals who are

repaying their debt through a DAS debt payment programme or have intimated an intention to submit a DAS application, and moratorium information

**Protecting creditors and the general public by:**

investigating debtor behaviour prior to and following sequestration and imposing Bankruptcy Restrictions Orders for periods of up to five years where appropriate. In cases where a longer period of bankruptcy restrictions is believed to be warranted, cases are referred to the Sheriff Court for consideration

submitting reports to the Lord Advocate where there are reasonable grounds to suspect that an offence has been committed

conducting impartial reviews of decisions made by AiB to allow outcomes to be challenged and changed without the requirement for court action

**Supporting Ministers by developing:**

policy for personal insolvency and diligence and arrangements for corporate insolvency in Scotland

policy for the Debt Arrangement Scheme

debt advice policy

providing access to sources of information and advice on debt and borrowing

Annex B Accountant in Bankruptcy Expenditure  
(drawn from 2016-17 Accounts)

£000s

Staff Costs	4,703
Other Operating Costs	2,138
Direct Sequestration Costs	4,613
Non cash expenditure	1,200
Total	12,654

Other Operating Costs comprise:

Travel and subsistence	21
Accommodation	606
General admin*	1,511

\*mainly IT spending and grants to third parties

Direct Sequestration Costs comprise:

Insolvency Agents' fees	3,364
Legal fees	653
Other outlays	596

Non cash expenditure comprises:

Depreciation	1,158
Auditor's fees	42

Annex C      Accountant in Bankruptcy Income  
 (from 2016-17 Accounts)

£000s

Creditor petition application fees	397
Debtor application fees	503
Repayments to the public purse	6,414
Trustee audit and other statutory fees	1,906
Trust deed registration and advertising fees	439
Trust deed supervision and audit fees	2,011
Consignation lodgement and uplift fees	183
Data download and discharge certificate fees	44
Debt Arrangement Scheme (DAS) fees	623
Total	12,520

Annex D March 2017 Proposals

The following table sets out both the current fees (in column 3), and the changes proposed in March 2017

TABLE OF FEES - BANKRUPTCY

PART 1

Fees for Accountant in Bankruptcy as interim trustee or trustee in sequestration

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Former Rates)</i>
1. In respect of the exercise by AiB of that office's functions as interim trustee in a sequestration where AiB is not appointed as trustee in that sequestration.	£300.00	£200.00
2. In respect of the exercise by AiB of that office's functions as interim trustee or trustee in a sequestration, other than in respect of— the realisation of assets in the sequestrated estate; ingathering debtor's contributions; and payment of dividends to creditors.	£1,500.00	£1,100.00
3. In respect of the exercise by AiB of that office's functions as trustee in a sequestration in relation to the realisation of assets in the sequestrated estate—  (a) in respect of the total price paid in a transaction by the purchaser of heritable property, including any interest paid thereon, but after the deduction of any sums paid to secured creditors in respect of their securities over that property—  on the first £50,000 or fraction of that sum;  on the next £50,000 or fraction of that sum;  on all further sums;	15% of that amount  5% of that amount  2% of that amount	15% of the first £10,000 or fraction  5% of the next £10,000 or fraction  2% of sums over £20,000
in respect of the proceeds of the sale of moveable property, after the deduction of the expenses of sale and any sums paid to secured creditors in respect of their securities over that property—		

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Former Rates)</i>
on the first £50,000 or fraction of that sum;	15% of that amount	15% of the first £10,000 or fraction
on the next £50,000 or fraction of that sum;	5% of that amount	5% of the next £10,000 or fraction
on all further sums;	2% of that amount	2% of sums over £20,000
4. In respect of the exercise by AiB of that office's functions as interim trustee or trustee in a sequestration in ingathering debtor's contributions.	25% of funds ingathered	(No change)
5. In respect of the exercise by AiB of that office's functions as trustee in relation to the payment of dividends to creditors—		
(a) on the first £10,000 or fraction of that sum;	10% of that amount	(No change)
on the next £10,000 or fraction of that sum;	5% of that amount	(No change)
on all further sums.	1% of that amount	(No change)

## PART 2

### Fees for other functions of the Accountant in Bankruptcy

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
1. For administration of—		
(a) any petition by a creditor or trustee under a protected trust deed;	£150.00	£100.00
any such petition where following award of sequestration AiB is the trustee.	£300.00	£200.00
2. For supervising proceedings in sequestration—		
(a) where commissioners have been elected;	(a) £100.00 per 12 month period of supervision beginning on the date of	£70.00 per 12 month period of supervision.

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
	appointment of the trustee and ending on discharge of the trustee (or part of such period) for the first 12 month period (or part of such period); and	
	(b) thereafter £70.00 per 12 month period of supervision throughout which commissioners are in post (or part of such period).	£50.00 per 12 month period of supervision.
where no commissioners have been elected;	£100.00 per 12 month period of supervision beginning on the date of appointment of the trustee and ending on discharge of the trustee (or part of such period).	£70.00 per 12 month period of supervision.
3. For considering and issuing a determination in an appeal against a determination of commissioners as to the outlays and remuneration payable to a trustee.	5% of the sum remaining on deduction from the sum of outlays and remuneration determined by AiB of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	<i>(No change)</i>
4. For issuing a determination fixing the outlays and remuneration payable to—  (a) an interim trustee; or  a trustee.	17.5% of the sum remaining on deduction from the sum of outlays and remuneration determined of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation; subject to a maximum payable (per determination) of £5,000.	17.5% of that sum with no maximum.
5. For attendance at any meeting of creditors – fee per hour or part thereof, including travelling time.	£69.00	<i>(No change)</i>

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
6. For calling any meeting of creditors.	£36.00	(No change)
7. For attendance at any examination of the debtor – fee per hour or part thereof, including travelling time.	£69.00	(No change)
8. In respect of protected trust deeds—		
(a) for publishing a notice in the register of insolvencies where—		
the notice is sent by the trustee using the electronic service provided by AiB;	£40.00	£35.00
the notice is sent by the trustee by any other method;	£100.00	£90.00
for registering a protected trust deed;	£40.00	£36.00
for supervision of a trustee under a protected trust deed.	£100.00 per 12 month period of supervision beginning on the date of registration of the protected trust deed and ending on the discharge of the trustee (or part of such period).	(No change)
9. For auditing the accounts of a trustee under a protected trust deed and fixing the trustee's remuneration.	5% of the sum remaining on deduction from the sum of outlays and remuneration determined of any outlays incurred by way of statutory fees, trading expenses or expenses of realisation.	(No change)
10. For lodging any unclaimed dividend in an appropriate bank or institution set aside for payment to a creditor or creditors, in respect of each creditor on consignment.	£26.00	(No change)
11. For uplifting any unclaimed dividend consigned in an appropriate bank or institution, in respect of each creditor.	£26.00	(No change)

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
12. For receiving a report of proceedings at the statutory meeting to elect a replacement trustee, other than following the death of a trustee acting in only one sequestration.	£50.00	<i>(No change)</i>
13. For considering appointment of a replacement trustee where the original trustee has resigned and no new trustee is elected by trustee vote.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of appointment)</i>
14. For considering an order in relation to an application for removal of a trustee by commissioners or a person representing at least ¼ in value of the creditors.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of order)</i>
15. For considering a declaration or any necessary order in relation to an application for declaration of the office of trustee as vacant by commissioners, a debtor or a creditor.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of declaration or order)</i>
16. For considering making a determination or appointment on receipt of an application by a person with an interest for the replacement of a trustee acting in more than one sequestration.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of determination or appointment)</i>
17. For considering appointment of a trustee where newly identified estate is discovered after the trustee's discharge, on receipt of an application by the trustee who was discharged.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of appointment)</i>
18. For considering an application by a trustee for a direction on a particular matter arising in the sequestration.	£50.00	<i>(No change to fee, but fee now applicable to any application)</i>
19. For considering issuing an order curing defects in procedure on receipt of an application by any person having an interest.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of issuing order)</i>
20. For considering an application for recall of sequestration (except on direction of a sheriff).	£100.00	<i>(No change to fee, but fee now applicable to any application)</i>
21. For considering any order in relation to an application by a member State liquidator for conversion of a trust deed into sequestration.	£50.00	<i>(No change to fee, but fee now applicable to any consideration of order)</i>
22. For considering determination of a debtor application in relation to—		<i>(No change)</i>

<i>Column 1 (Functions)</i>	<i>Column 2 (Fee Payable)</i>	<i>Column 3 (Fee Formerly Payable)</i>
(a) a debtor to whom section 2(2) of the Act applies <sup>(1)</sup> ;	£90.00	
any other debtor.	£200.00	
23. For an application to the court or AiB for a bankruptcy restrictions order.	£250.00	<i>(No change)</i>
24. For registering a court order appointing a replacement trustee.	£50.00	£19.00

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<sup>(1)</sup> Known as “minimal asset process” (or MAP) cases.

**Annex E — Fees Proposed in this consultation paper 2017 compared with current England and Wales Fees structure**  
**Comparison based on fees where AiB/Official Receiver is administering bankruptcy**

Fee Category	2017 Fees - Scotland	Current Fees – England and Wales
<b>“Up-Front” Fees</b>		
Bankruptcy – Debtor Application	£90 – Minimal Asset Process application £200 – Bankruptcy application	£90 – Debt Relief Order application £550 – Debtor’s Deposit (bankruptcy application)
Bankruptcy - Creditor Petition	£150 – Administration of Petition £300 – Administration where AiB appointed on award of bankruptcy	£990 – Petitioner’s deposit
<b>Administration Fees</b>		
Bankruptcy	£1,700 – Fixed administration fee (where AiB appointed as trustee)  Payment of Dividend (AiB appointed): 10% of first £10,000 5% of next £10,000 1% of further sums  Audit fee – 17.5% on determination of fees/outlays	£1,990 – Official receiver’s administration fee following debtor application (applies in all cases)  £2,775 – Official receiver’s administration fee following creditor petition (applies in all cases)  £6,000 – Official Receiver’s general fee following creditor petition (applies in all cases)  £150 – Income payment order/agreement fee (on making of IPA/O)
<b>Commissions</b>		
Bankruptcy	Where AiB is appointed:  Assets: 15% of first £10,000 5% on next £10,000 2% thereafter  Contributions: 25% of funds ingathered	Where official receiver is appointed:  Assets and Contributions - 15% of all receipts realised by official receiver